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Filed Mar. 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 210.

THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY, PETITIONER,

vs.

BENJAMIN F. JONES ET AL.

SUPPLEMENTAL MEMORANDA FOR RESPONDENTS.

TALFOURD P. LINN,
Of Counsel for Respondents.

(17,296.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3-24-1900

IN THE

Supreme Court of the United States.

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THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY, PETITIONER,

vs.

BENJAMIN F. JONES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Supplemental Memoranda for Respondents.

The action in this case is not brought by individuals, but by an association of individuals doing business as Jones & Laughlins, Limited. The bill avers that the association is one formed under and in accordance with the provisions of an act of the General Assembly of the State of Pennsylvania entitled "An act authorizing the formation of a partnership association in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances."

The date of the act, as set out in the bill, is given as June

23, 1874, as appears by the record. This date by mistake of the printer or some one else is incorrect, the proper date being June 2, 1874. The act will be found in the Session Laws of Pennsylvania for 1874, on page 271, and is the only act of 1874 referring to limited partnership associations. This act, together with its amendments and supplements, will be found in the Revised Statutes of Pennsylvania, page 1086. By paragraph 16 of the act as found in the Revised Statutes, such associations are given the right to sue and be sued in the association named.

Paragraph 197 of the constitution of Pennsylvania provides that "The term 'corporations' as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships" (Rev. Stats. Pa., p. 48).

The bill avers that complainant association is and was at all times mentioned in the bill a citizen of the State of Pennsylvania. Under the acts quoted above and the provision of the constitution referred to, this averment of citizenship was sufficient, the complainant association being, within the meaning of the statute, a corporation, in so far as such allegation of citizenship is concerned. The exact status of associations similar to that of complainant and organized under the same law is discussed and considered in Coal Company *vs.* Rogers, 108 Pa. State, 147.

That corporations are citizens within the meaning of the statute requiring proper citizenship of parties to confer jurisdiction upon the Federal courts is settled in many cases. (See Railway Co. *vs.* Whittner, 13 How., 270; Louisville R. R. Co. *vs.* Letson, 2d How., 497; also notes to sec. 152, Garland & Ralston's Federal Practice.)

Should the court be of opinion that the complainant association is not under the laws of Pennsylvania a citizen, but that it should be considered in the light of a general

partnership, we still think the allegations of the bill as to citizenship are sufficient to confer jurisdiction.

In Express Co. *vs.* Kountze Bros., 8 Wall., 342, the declaration (see p. 347) described plaintiffs as "an association of persons carrying on the banking business in Omaha, Nebraska." This was held to be a sufficient averment of citizenship.

The bill here not only asserts that the association complainant was a citizen of Pennsylvania, but sets out the names of all of its members and shareholders and alleges their office and place of business to have been in Pennsylvania.

Should the court, however, be of opinion that the bill, under no view that may be taken of it, sufficiently alleges diverse citizenship so as to confer jurisdiction, then we submit that in view of the fact that counsel for petitioners have not at any stage of the proceedings in any way objected to the jurisdiction of the court upon this or any other ground, and in further view of the fact that neither the circuit court nor the circuit court of appeals have intimated or considered any such objection, the complainant should be permitted, within the rule established in Robertson *vs.* Cease, 97 U. S., 646, to amend its complaint as to citizenship, the fact of such citizenship, both of the association and all of its members, being undisputed, and that the proper order allowing such amendment should be transmitted to the circuit court where the action was commenced.

At the request of counsel for cross-petitioner, Sossman & Landis, we suggest to the court that inasmuch as no such objection is urged as to jurisdiction in their case, the principal questions argued should be decided by the court as between them and the petitioner herein, irrespective of the judgment of the court as to jurisdiction in the case of Jones & Laughlins, Limited.

TALFOURD P. LINN,
Of Counsel for Respondents.